

Article - Health - General

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§2-705.

(a) Not less than 15 calendar days before commencement of an audit by the Inspector General under this subtitle, the Inspector General shall give to the provider written notice of the audit, including:

- (1) The statistically valid sampling methodology to be used;
- (2) The name, contact information, and credentials of each individual conducting the audit, including the individual validating the methodology;
- (3) The audit location, including whether the audit will be conducted on-site at the location of the provider or through record submission; and
- (4) The manner in which the information requested must be submitted.

(b) (1) Except in cases where the Inspector General refers the audit findings and conclusions to the Office of the Attorney General Medicaid Fraud Control Unit or other applicable law enforcement agency, the Inspector General shall, on completion of the audit, conduct an exit conference with the provider that is the subject of the audit.

(2) During the exit conference, the Inspector General shall:

(i) Present the provider with the audit draft written findings and conclusions and the estimated amount of recovery due as a result of overpayment to the provider; and

(ii) Give the provider the following information in writing:

1. A clear description of the universe from which the sample was drawn;
2. The sample size and the method used to select the sample;
3. The formulas and calculation procedures used to determine the amount to be recovered;

4. The list of claims that were reviewed;

5. A description of each claim, noting the errors that resulted in an overpayment; and

6. A specific list of the regulations, statutes, and transmittals on which the Inspector General relied in determining that the claim was improper.

(3) (i) A provider may challenge the draft findings and conclusions within 30 days after the exit conference unless, because of the size and scope of the audit, the provider:

1. Has negotiated a longer period with the Inspector General through a mutual good faith process; and

2. Has submitted additional information regarding the claims to the Inspector General.

(ii) The additional information submitted under subparagraph (i) of this paragraph may include evidence showing that:

1. The claims used in the sample were either paid properly or paid in accordance with § 2-703 of this subtitle; or

2. The audit does not meet applicable requirements or reach valid findings and conclusions.

(4) Failure to challenge the draft findings and conclusions contained in the preliminary report does not preclude a provider from appealing the final report and recovery letter under subsection (d) of this section.

(c) (1) The Inspector General shall review any additional documentation submitted by the provider under subsection (b) of this section or presented at any time during the audit.

(2) After review of any additional documentation submitted by the provider, the Inspector General shall, when appropriate, recalculate the error rate used in extrapolation and issue its final report and recovery letter.

(3) The final report and recovery letter shall state that the provider has 30 days after the date of the recovery letter to appeal the findings in the report in accordance with § 2-207 of this title, Title 10, Subtitle 2 of the State Government Article, and COMAR 10.01.03 and 28.02.01.

(d) (1) On appeal, the provider may present evidence of a second audit using the same sampling methodology but based on a different sample of claims identified and produced by the Inspector General.

(2) On request of the provider, the Inspector General shall provide a new sample of claims to the provider within 30 days after receipt of the request.

(3) The provider shall have 60 days after receipt of the new sample to conduct the audit and provide the results to the Inspector General, unless the provider has negotiated a longer period with the Inspector General.

(4) The Inspector General may review the provider's audit for compliance with the requirements of this subtitle.

(e) The recovery shall be stayed until completion of the administrative appeal process.

(f) This subtitle does not limit a provider from challenging the accuracy of the Inspector General's audit, including:

- (1) The statistical and extrapolation methodology used in the audit;
- (2) The credentials of any individual who performed or reviewed the audit; or
- (3) Any other reasonable basis.

(g) (1) The Department may adopt the findings of the federal government, including the error rate, if the federal government conducts an audit that:

- (i) Concludes that a provider received an overpayment;
 - (ii) Uses an error rate that is specific to a single provider;
 - (iii) Derives the overpayment from a statistically valid sample;
- and
- (iv) Provides all supporting documentation of the audit.

(2) If the Department adopts the findings of the federal government, the Department shall provide to the provider a copy of the federal government's audit

report and supporting documentation with the preliminary recovery letter stating the amount due to the State and the provider's appeal rights.

(3) (i) Within 30 days after receipt of the preliminary recovery letter, the provider may challenge the draft findings and conclusions unless, due to the size and scope of the audit, the provider:

1. Has negotiated a longer period with the Inspector General through a mutual good faith process; and

2. Has submitted additional information to the Inspector General.

(ii) The additional information submitted under subparagraph (i) of this paragraph may include evidence showing that:

1. The claims used in the sample were either paid properly or paid in accordance with § 2-703 of this subtitle; or

2. The audit did not meet applicable requirements or reach valid findings and conclusions.

(4) Failure to challenge the draft findings and conclusions contained in the preliminary recovery letter does not preclude a provider from appealing the final report and recovery letter under subsection (d) of this section.

(h) This subtitle does not apply to audits conducted in response to federal audits initiated before October 1, 2016.

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